

September 20, 2007

VIA FACSIMILE AND FIRST CLASS MAIL

Mr. Karl Maddox  
South Carolina Occupational Safety & Health Administration  
S.C. Department of Labor, Licensing and Regulation  
110 Centerview Drive  
Columbia, SC 29210

Re: South Carolina Occupational Safety & Health Administration  
Citation and Notification of Penalty  
Inspection No. 310966023  
Date: September 20, 2007  
The City of Charleston

Dear Mr. Maddox:

The City of Charleston ("the City") hereby responds to the above referenced Citation and Notice of Penalty ("the Citation") by requesting an informal conference to discuss same with the South Carolina Occupational Safety & Health Administration ("SC OSHA"). This request is being made pursuant to the terms of Section 71-406 of the South Carolina Code of Regulations. By requesting an informal conference, the City is not waiving its right to seek a formal hearing by filing a written protest with the South Carolina Department of Labor, Licensing and Regulation ("LLR").

The City is very interested to meet with you to discuss the facts as you understand them and the reasoning behind these citations. As you may be aware, the City has publicly and fully recommitted itself to implementing any and all improvements necessary to protect our firefighters. In so doing, the City has convened and funded a panel of independent experts from across the nation to identify and propose such improvements. Additionally, the City has already implemented or is in the process of implementing each of the abatement findings contained in the Citation.

We are very concerned about the reasoning underlying the first citation. You believe that the City should have written procedures for dealing with the hazards of metal truss roof fires. The City

Mr. Karl Maddox  
September 20, 2007  
Page Two

has recently adopted such a written policy, but the City was not aware it was under any requirement to do so before or after the fire. The existing regulation requires written procedures regarding the handling of "special hazards such as storage and use of flammable liquids and gases, toxic chemicals, radioactive sources, and water reactive substances." This language does not seem to apply to structural hazards like metal truss roof buildings at all. We would be very interested to know if this regulation has ever been interpreted before in the way you are interpreting it here. It seems that OSHA is imposing requirements in hindsight that did not exist at the time you allege the City violated them.

As to the second citation, all of our firefighters were provided with protective gear and the City requires it to be worn while actively fighting interior, structural fires. We would be very interested to learn on what basis you concluded that nine of the City's firefighters were not fully compliant with protective gear requirements during the fire of June 18, 2007. As we understand it, the nine firefighters referred to in the citation were not the nine who perished in the fire. We are concerned that your citations may relate to some fire fighters who were fully in compliance with the regulations in question because they were either outside the building or not actively engaged in direct fire fighting at the time. Similarly, the third citation related to the wearing of self-contained breathing gear also seems to be inconsistent with the regulation on which it is based.

As to the fourth citation, as you are aware the City does have written policies related to command structures and systems for fire response. While we have upgraded those policies recently, consistent with the commitments referenced above, we are not aware of any way in which the prior policies were or are in violation of OSHA standards. There are no requirements in OSHA regulations for written command structure procedures whatsoever. Again, it appears to the City that OSHA is imposing requirements in hindsight that did not exist at the time you alleged the City violated them.

Most importantly, the City vehemently protests any allegation that it engaged in any "willful" behavior in disregard of the lives and safety of our valued firefighters. A finding of willful behavior requires facts indicating that the City failed to take action after it had been put on notice of a specific hazard or that it acted with willful disregard or plain indifference to employee safety. The City has never been cited by OSHA for any problem with regard to its written command system policies nor is there any evidence we acted with indifference to the safety of our firefighters in adopting the standards that were in force on June 18, 2007. The City has not and would not willfully put the lives of our brave firefighters at risk.

Because deadline for filing its Petition of protest regarding the Citation with LLR is twenty (20) days from receipt of the Citation, the City would be grateful if SC OSHA would schedule the informal conference requested hereby for the earliest date and possible.

Very truly yours,

Charlton deSaussure, Jr.

